

As required by Sections 309 and 402(b)(7) of the CWA and 40 C.F.R. Section 123.27, ODA has the authority under Section 903.30 and 903.99 of the Revised Code to seek criminal penalties for violations of the NPDES program. Section 903.30(A) prohibits anyone from:

- discharging without a NPDES permit, a violation of R.C. 903.08(B)(1);
- discharging storm water resulting from an animal feeding facility without a NPDES permit, a violation of R.C. 903.08(C)(1);
- failing to submit a notice of the person's intent to be covered under an existing general NPDES permit or individual NPDES permit, a violation of R.C. 903.08(F);
- making any false statements, representations, or certifications on any application, form, notice, or report related to NPDES permitting or using an inaccurate monitoring method or device required by an NPDES permit, a violation of R.C. 903.08(K);
- violating an effluent limit established by rule, a violation of R.C. 903.08(M)(1);
- violating a term or condition of a NPDES permit, a violation of R.C. 903.08(M)(2);
- violating the NPDES provisions of a permit to operate;
- violating a rule adopted pursuant to the authority referenced in the aforementioned provisions of R.C. 903.08; and
- violating an order issued pursuant to the authority referenced in the aforementioned provisions of R.C. 903.08.

Pursuant to R.C. 903.99(A), if any person negligently violates any of the aforementioned prohibitions set forth in R.C. 903.30(A), the person shall be fined not more than \$10,000.00 and/or imprisoned not more than ninety days. Negligence has been defined, in R.C. 903.99(A), as an ordinary lapse of due care, which is at least as stringent as the applicable federal standard as discussed in 40 C.F.R. 123.27(b)(2). If any person recklessly violates any of the

aforementioned prohibitions set forth in R.C. 903.30(A), the person shall be fined not more than \$10,000.00 and/or imprisoned not more than one year pursuant to R.C. 903.99(B). Finally, pursuant to R.C. 903.99(C), if any person, with knowledge, violates any of the aforementioned prohibitions set forth in R.C. 903.30(A), the person shall be guilty of a felony and fined not more than \$25,000.00 and/or imprisoned not more than three years. For any violations committed negligently, recklessly, or knowingly, each day of each violation constitutes a separate offense, consistent with 40 C.F.R. 123.27(b)(1).

The fine and imprisonment authorized for violations of R.C. 903.08(F), 903.08(M)(1), and 903.08(M)(2), as applied through R.C. 903.30(A) and R.C. 903.99, are at least as stringent as the criminal penalties promulgated in 40 C.F.R. 123.27(a)(3)(ii). The fine and imprisonment authorized for violations of R.C. 903.08(K), as applied through R.C. 903.30(A) and R.C. 903.99, are at least as stringent as the fine and imprisonment promulgated in 40 C.F.R. 123.27(a)(3)(iii).